

**VOLUME VII
SECTION IV**

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ADULT SERVICES PROVIDERS

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1. LEGAL BASE

This chapter describes policies and procedures for providers of services to adults who are approved by the local department of social services and is based on state regulation 22 VAC 40-770-10 et seq., *Standards and Regulations for Department Approved Providers*. The services include:

- Home-based services (i.e., companion, chore, and homemaker services);
- Adult foster care; and
- Adult day services.

2. DEFINITIONS

2.1 Definition of Terms

The following words and terms, when used in this policy, shall have the following meaning, unless the context clearly indicates otherwise:

2.1.1 "Adult" means any individual 18 years of age or over.

2.1.2 "Adult abuse" means the willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult.

2.1.3 "Adult day services provider" means a provider who gives personal supervision for up to three adults for part of a day. The provider promotes physical, social, and emotional well-being through companionship, self-education, and leisure time activities. Day services provided for more than three adults require licensure by the Virginia Department of Social Services.

2.1.4 "Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

2.1.5 "Adult foster care provider" means a provider who gives room and board, supervision, and special services in his or her own home for up to three adults unable to remain in their own home because of a physical/mental condition or an emotional or behavioral problem. Care provided for more than three adults requires licensure by the Virginia Department of Social Services.

2.1.6 "Adult neglect" means that an adult is living under such circumstances that he or she is not able to provide for himself or herself or is not being provided services necessary to maintain his or her physical or mental health and that the failure to receive such necessary services impairs or threatens to impair his or her well-being. Adult neglect includes self-neglect as well as neglect by others.

2.1.7 "Assistant" means any individual who is responsible to assist a provider in caring for individuals.

- 2.1.8** "Chore provider" means a provider who performs non-routine, heavy home maintenance tasks for adults unable to perform such tasks for themselves.
- 2.1.9** "Companion provider" means a provider who assists adults unable to care for themselves without assistance in activities such as activities of daily living, meal preparation, light housekeeping, shopping, and companionship.
- 2.1.10** "Department" means the Virginia Department of Social Services.
- 2.1.11** "Homemaker" means a provider with homemaking skills acquired through training and/or experience who gives instruction in or, where appropriate, performs activities such as personal care, home management, household maintenance, and nutrition, consumer or hygiene education.
- 2.1.12** "In-home provider" means an individual who gives care in the home of the adult needing supervision and/or service.
- 2.1.13** "Local department" means the local department of social services.
- 2.1.14** "Out-of-home provider" means an individual who gives care in the individual's own home to adults who enter the home for purposes of receiving needed supervision and/or services.
- 2.1.15** "Residential care" means care provided for purposes of receiving room, board, and services on a 24-hour basis.
- 2.1.16** "Responsible person" means the guardian or an individual designated by an adult.

2.2 DEFINITION OF LOCAL DEPARTMENT APPROVED PROVIDERS

- 2.2.1** This policy is applicable to the following providers who are approved by the local department of social services:

1) Out-of-Home Providers

- a.** Adult day services providers
- b.** Adult foster care providers

2) In-Home Providers

- a.** Companion providers
- b.** Chore providers
- c.** Homemaker providers

2.2.2 Mixed Programs

Approval of a provider for more than one type of care is permitted. The requirements applicable to each specific type of care provided must be met.

2.2.3 Subcontracted Providers

This policy is applicable to individual providers who are subcontracted by local departments, such as home health care providers who are subcontracted by the local department to perform home-based care services.

2.2.4 Licensed Providers

This policy is **not** applicable to individual providers who are either licensed by the Department or approved through an organization licensed by the Department, such as adult day services centers.

3. REQUIREMENTS FOR PROVIDERS AND THEIR HOUSEHOLDS

3.1 Age

3.1.1 All homemaker services providers who are approved by the local department to provide homemaker services to adults shall be at least 18 years of age.

3.1.2 Companion and chore providers shall be at least 16 years of age.

3.1.3 Any assistant to a local department approved provider shall be at least 16 years of age.

3.2 Criminal Records

3.2.1 The provider and any employee, prospective employee, any adult living in a home where local department approved provider services are rendered, and the assistant shall identify any criminal convictions and be willing to consent to a criminal records check.

1) Application

The Application for Department Approved Provider, 032-02-138, found at http://www.dss.state.va.us/form/pdf/032-02-138_0.pdf, requires the provider to identify any criminal convictions. The provider must sign the Application to indicate his or her willingness to consent to a criminal records check.

2) Whose Record to Check

a. Required for Adult Foster Care Providers

A statewide criminal record check must be performed on the provider, any assistant, the provider's spouse, and all other adult household members who have contact with adults in care where adult foster care services are rendered. This must be done regardless of the response to the criminal records question on the Application. These checks should be repeated at the time of renewal. The provider applicant may pay for the criminal

background check, or Budget Line 833 funds may be used.

b. Encouraged for Other Adult Services Providers

A criminal record check is encouraged for the provider of other services to adults (i.e., adult day services and home-based care). It is also encouraged for any employee, prospective employee, agents involved in the day-to-day operation, any adult living in a home where local department approved provider services are rendered and who have any contact with adults in care, and spouse of the provider for adult day services. These checks should be repeated at the time of renewal.

3) Local Police Records

Local police have access to criminal history record information. The local department should explore what criminal record information is available through the local police. Information, if available, may be on local convictions only, on statewide convictions, or on convictions from other states. In exploring this question with local police, the local department should also determine what authorization is necessary from the person whose record is being checked.

4) Criminal Record Information from Other States

If not available through the local police, criminal record information on arrests and convictions occurring in other states may be obtained from the state where the provider or household member resided if the other state's law allows information to be disseminated.

5) Central Criminal Records Exchange

Virginia State Police maintain criminal history record information for arrests and convictions in Virginia. If the local police are not able or willing to conduct the statewide search, the Criminal History Record Name Search Request (form SP-167) should be queried. To access this form online, go to <http://www.vsp.state.va.us/forms.htm>.

6) National Criminal Background Check

The Virginia State Police can also conduct a national criminal background check for employees or volunteers providing care to the elderly and disabled using form SP-24 available online at <http://www.vsp.state.va.us/Forms/SP-024.pdf>. Two applicant fingerprint cards must be completed and attached to this form. Contact the Virginia State Police or local law enforcement for information.

7) Local Department Adult Protective Services Check

Local departments shall check their APS records to determine if there have been any founded reports on the provider or applicant and, for out-of-home care, any employee, prospective employee, agents involved in the day-to-day operation, any adult living in a home where local department approved provider services are rendered and who have any contact with adults in care, and spouse of the provider. Local department staff shall use this information to determine the potential risk to adults in care and use it as a basis for approval or denial.

3.2.2 The provider and any employee, prospective employee, volunteers, agents involved in the day-to-day operation, any adult living in a home where local department approved provider services are rendered, and the assistant shall not have been convicted of a felony or misdemeanor that jeopardizes the safety or proper care of other adults.

1) Information Received from the Central Criminal Record Exchange

- a. If no record exists on the individual, the Central Criminal Records Exchange will stamp and return the form to indicate this.
- b. If a record exists, the information furnished will include identifying information, contributing agency, date of occurrence, charge, and disposition.
- c. Information on providers and all household members will only include information on convictions.
- d. The Central Criminal Records Exchange does not contain information on certain offenses. These include driving a motor vehicle while intoxicated; disorderly conduct; trespassing; and class III and IV misdemeanors (such as gambling, slander, drunk in public, etc.).

2) Determining when Criminal Convictions Jeopardize Adults

- a. The provider and any employee, prospective employee, agents involved in the day-to-day operation, any adult living in a home where local department approved provider services are rendered, and the assistant who have been convicted of any of the following shall be prohibited from being approved as a local department approved provider of services to adults:
 - (1) Murder;
 - (2) Abduction for immoral purposes (§ 18.2-48);

- (3) Criminal sexual assault (§ 18.2-61 through 18.2-67.10);
 - (4) Pandering (§ 18.2-355); or
 - (5) Obscenity offenses (§ 18.2-374.1 or 18.2-379).
- b. The local department will need to exercise judgment in the approval or denial of providers where convictions of other felonies and misdemeanors are found. The provider record should document the reasons for the approval or denial. No denial may be based solely on arrest information where no conviction has been made.

3) Confidentiality of Criminal Record Information

Criminal record information can only be used for the purpose intended. It must not be shared with anyone other than the individual identified in the record. For example, conviction information on a household member cannot be shared with the provider. However, the provider could be told that he or she is being denied because this requirement is not met.

3.3 Interview, References, Employment History, and Assessment

3.3.1 Interviews – All Providers

The provider shall participate in interviews with the local department.

1) Out-of-home Providers

At least one interview with an out-of-home provider must occur in the provider's home (where care is to be provided) at the time of the initial approval and at renewal. If 24-hour care will be provided, all household members should be interviewed.

2) In-home Provider

At least one interview with an in-home provider must be face-to-face at the time of initial approval and at renewal. For in-home providers used by the local department, the local department representative will interview the provider face-to-face as often as necessary, but at least semi-annually to monitor the provider.

3.3.2 References – All Providers

The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider. The local department may request more than two references.

1) Application

The provider must list at least two references on the Application for Agency Approved Provider, 032-02-138.

2) Follow-up

- a. The local department must check references for the initial approval. References do not need to be rechecked at renewal.
- b. The local department may contact references by telephone, face-to-face interview, or request a reference in writing. References which are not written must be documented in the provider record by the worker. A sample format for reference questions is contained in the Appendix.

3.3.3 Employment History – All Providers

The provider shall provide information on the provider's employment history.

1) Application

The provider must list previous employment on the Application of Agency Approved Provider, 032-02-138.

2) Follow-up

The local department must check employment that is relevant to the type of care to be provided at initial approval. The local department may wish to check other employment to assess the prospective provider on characteristics identified below. The local department may check employment by telephone, face-to-face interview, or request it in writing.

3) Additional Requirements

The local department may perform competency testing to ensure that the individual is able to meet the demands of providing the services for which he or she is applying to provide.

3.3.4 Assessment of Provider – All Providers

The local department will use the interview, references, and employment history to assess that the provider:

- 1) Is knowledgeable in and physically and mentally capable of providing the necessary care for adults;
- 2) Is able to sustain positive and constructive relationships with adults in care and to relate to adults with respect, courtesy, and understanding;

- 3) Is capable of handling emergencies with dependability and good judgment; and
- 4) Is able to communicate, respond constructively to feedback from the adult and local department staff, and follow instructions sufficiently to assure adequate care, safety, and protection for adults.

3.3.5 Additional Requirement for Adult Foster Care Providers

For adult foster care providers, the local department will further use the interview, references, and employment history to assess that the provider has sufficient financial income and/or resources to meet the basic needs of his or her own family.

- 1) The purpose of this assessment is to determine that the provider is not relying on the payment made for the foster care adult to be income to support his or her family. The payment is to support the adult. It is not taxable income to the provider.
- 2) This requirement can be addressed during the interview by determining how the provider is able to pay his or her personal bills.

3.3.6 Additional Requirements for Homemaker Providers

For homemaker providers, the local department will further use the interview, references and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:

- 1) Home management and household maintenance;
- 2) Personal care of ill, disabled, or aged adults;
- 3) Nutrition education and meal planning and preparation, including special diets; and
- 4) Personal hygiene and consumer education.

It is not required that all homemaker providers have each of the knowledge, skills and abilities identified. The adult's needs should dictate which knowledge, skills, and abilities are necessary.

3.4 Training – All Providers

- 3.4.1 The provider shall attend all orientation and training required by the local department.
- 3.4.2 The local department shall provide some basic orientation to any approved provider to enable the provider to perform the services expected.

3.5 Medical Requirements – All Providers

3.5.1 Tuberculosis

- 1) Unless the provider is an in-home provider who is:
 - a. A relative or friend of the adult living in the adult's home; or
 - b. A relative or friend outside of the adult's home, but who has had regular ongoing contact with the adult, the provider and any employee, prospective employee, agents involved in the day-to-day operation, volunteers, any adult living in a home where local department approved provider services are rendered, and the assistant shall submit a statement from the local health department or licensed physician that he or she is believed to be free of tuberculosis in a communicable form. If the individual named within this section is not believed to be free of tuberculosis in a communicable form, the individual may not provide services to adults described in this chapter.

In the case of a. or b. above, the provider may only provide care for the adult for whom he or she is approved to provide care, and the adult's name must be noted on the compliance form.

- 2) The statement must indicate that the individual is free from tuberculosis in a communicable form. This does not mean that the actual test must be performed; a risk assessment is permitted. The form entitled Request for Tuberculosis Statement, 032-02-142, may be used to obtain the statement.
- 3) After initial approval, a statement regarding tuberculosis does not need to be obtained again unless the individual has contact with someone who has tuberculosis or develops chronic respiratory symptoms (more than four weeks in duration).
- 4) If the individual was tested for tuberculosis within the past year, a new test does not need to be performed as long as the statement is obtained.
- 5) The cost of any tuberculosis test may be paid by the local department as an administrative cost charged to services if not covered by any other insurance program.

3.5.2 Other Medical Examinations

The provider and/or assistant shall submit the results of a physical and/or mental health examination when requested by the local department.

- 1) If the local department needs verification to determine if the provider is physically or mentally capable of providing the necessary care for adults, the local department should request an examination.
- 2) The physical or mental health examination may be paid by the local department as an administrative cost charged to services if not covered by any other insurance program.

3.6 Updated Information

All local department approved providers must keep the local department informed of changes in the household that may affect the continued approval of the provider.

4. REQUIREMENTS FOR CARE

4.1 Non-discrimination - All Providers

The provider shall provide care that does not discriminate on the basis of race, color, sex, national origin, age, religion, or handicap. The provider shall not discriminate against any adult for whom the provider is providing care.

4.2 Supervision

4.2.1 Supervision – All Providers

The provider shall ensure that adequate care and supervision is provided to adults and the adult's health, safety, and well-being are protected.

4.2.2 Supervision – Adult Day Services and Adult Foster Care

- 1) The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency. This plan must include posting of emergency numbers.
- 2) A responsible adult shall always be available to substitute for the provider in case of an emergency.
- 3) If extended absence of the provider is required, the local department must be notified of any substitute arrangements the provider wishes to make.
 - a. Generally, extended absence is greater than one day.
 - b. The local department must approve substitute arrangements prior to the provision of services by the substitute provider. The approval may include contact with the substitute.
 - c. The substitute provider must meet the requirements of this chapter as appropriate.

4.3 Food – Adult Day Services and Adult Foster Care

- 4.3.1 Adults shall receive meals and snacks appropriate to the number of hours in care and the daily nutritional needs of each adult.
- 4.3.2 Adults in adult foster care shall receive three nutritionally balanced meals a day.
- 4.3.3 Adults shall receive special diets if prescribed by a licensed physician or in accordance with faith or ethnic requirements or other special needs.
- 4.3.4 Adequate drinking water shall be available at all times.
- 4.3.5 This section does not require that the provider supply all food. In adult day services, the adult may bring food. In adult foster care or adult day services, the adult may eat elsewhere.

4.4 Transportation – All Providers

- 4.4.1 If the provider, and for out-of-home services, the assistant, spouse of the provider, volunteer, or any other agent involved in the day-to-day operation of the adult day services or adult foster care transports adults, he or she shall have a valid driver's license and automobile liability insurance.
 - 1) Minimum liability insurance coverage in Virginia applies.
 - 2) An "uninsured motorist" can operate a vehicle in Virginia and have no insurance coverage. This does not meet the insurance requirement.
- 4.4.2 The vehicle used to transport adults shall have a valid license and inspection sticker.
- 4.4.3 Providers and for out-of-home services, the assistant, spouse of the provider, volunteer, or any other agent involved in the day-to-day operation of the adult day services or adult foster care home who transport adults must ensure that all passengers are using safety belts in accordance with the requirements of Virginia law.
- 4.4.4 Transportation costs of any provider are not a reimbursable cost unless it can be determined that the adult will be neglected or at risk of being neglected without transportation assistance and such is a part of the service plan. In this case, Budget Line 895 funding could be used.

4.5 Medical Care

4.5.1 Medical Care - All Providers

- 1) The provider shall have the name, address, and telephone number of each adult's physician and contact person designated by the adult easily accessible.

- 2) The provider shall seek emergency medical care as needed and report all injuries and accidents to the adult's contact person immediately.
- 3) The provider must be able to meet the identified needs of the adult before providing services to the adult and must continue to meet the needs of the adult as long as the provider is serving the adult.
- 4) Except for chore providers, the provider shall have access to first aid supplies in case of accidents.

4.5.2 Medical Care - Adult Day Services and Adult Foster Care

- 1) The provider shall keep medicines and drugs separate from food except those items that must be refrigerated.
- 2) The provider shall ensure that prescription drugs are taken by the adult in accordance with an order signed by a licensed physician or authentic prescription label and shall document all medications, including over-the-counter, taken by the adult.

4.6 Activities – Adult Day Services and Adult Foster Care

The out-of-home provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of adults in care.

4.7 Abuse, Neglect, and Exploitation Reporting - All Providers

4.7.1 All providers of services to adults are mandated reporters under the *Code of Virginia*, § 63.2-1606. The provider and any other person listed as a mandated reporter in § 63.2-1606 must immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department. Failure to report can result in legal and/or civil action being taken against the provider. Local department staff should specify the procedures each provider should use for reporting to the local department.

4.7.2 The following individuals are identified as mandated reporters:

- 1) Health care practitioners including physicians, persons employed in the nursing profession and others who practice the healing arts;
- 2) Employees of public or private agencies or facilities who work with adults;
- 3) Caregivers who provide full-time or part-time care to adults for pay on a regular basis;
- 4) Persons employed as social workers;
- 5) Persons who work in mental health settings; or
- 6) Law-enforcement officers.

4.8 Clothing – Adult Foster Care

The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and shall ensure that all clothing is properly laundered or cleaned and altered or repaired as needed.

5. REQUIREMENTS FOR THE HOME OF THE OUT-OF-HOME PROVIDER

5.1 Physical Accommodations

5.1.2 The home shall have sufficient appropriate space and furnishings for each adult receiving care in the home to include:

- 1) Space to keep clothing and other personal belongings;
- 2) Accessible basin and toilet facilities;
- 3) For adult foster care, at least one toilet, one basin, and one tub or shower for every eight persons living in the home (including the adult in care and any household members).
- 4) Comfortable sleeping furnishings;
- 5) For adults unable to use stairs unassisted, sleeping space on the first floor of the home;
- 6) Space for recreational activities; and
- 7) Sufficient space and equipment for food preparation, service, and proper storage.

5.1.3 Rooms used by adults in care shall be heated in winter, dry, and well-ventilated.

5.1.4 All doors and windows used for ventilation shall be appropriately screened.

5.1.5 Rooms used by adults in care shall have adequate lighting for activities and the comfort of the adults.

5.1.6 The provider and any adults in care shall have access to a working telephone.

5.1.7 The home shall be in compliance with all local ordinances.

5.1.8 There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and/or talk privately.

5.1.9 Additional requirement for adult foster care: No more than two adults shall share a sleeping room (unless more than two adults request and consent to sharing a room of more than two adults).

5.2 Home Safety

- 5.2.1** The home and grounds shall be free from litter, debris, garbage, and rodents and present no hazard to the safety of the adults receiving care.
- 5.2.2** The home and grounds shall be free of fire safety hazards. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the agency requests it.
- 1)** Each local department should determine the appropriate local authority to inspect for safety hazards and may wish to develop an internal guide based on direction from that authority.
 - 2)** The local department may wish to do the following prior to, or in place of, requesting a safety inspection:
 - a.** Determine if there are any overloaded electrical wall outlets;
 - b.** Determine if there is any deteriorated insulation on electrical equipment;
 - c.** Inquire if the furnace is serviced regularly;
 - d.** Observe if any wood stove is on a non-combustible surface and combustibles are at least three feet away;
 - e.** Inquire if the chimney flue is lined and cleaned regularly;
 - f.** Inquire if a permit was obtained for any LP gas heater;
 - g.** Observe if there is any accumulation of grease around the range or oven; and
 - h.** Observe if there is excessive trash, old rags, or other combustibles lying around.
- 5.2.3** The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new adult placed in the home.
- 5.2.4** Attics or basements used by adults shall have two emergency exits. One of the emergency exits shall lead directly outside, and may be a door or an escapable window. A sleeping area can include several bedrooms in the same area. However, a home with bedrooms in two wings would require a smoke detector in each wing.
- 5.2.5** Possession of any weapons, including firearms, in the home must be in compliance with federal and state laws and local ordinances. The provider shall store any firearms and ammunition and other weapons in a locked cabinet or an area not accessible to adults with safety mechanisms activated.

- 5.2.6** The provider shall protect adults in care from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances and documentation of inoculations made available if the local department requests it.
- 5.2.7** The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults who are mentally incapacitated.
- 5.2.8** Adult foster care and adult day services providers shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector as a minimum in each sleeping area and on each additional floor. Existing installations that have been approved by the State or local fire marshal are exempted from this requirement.

5.3 Sanitation

- 5.3.1** The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.
- 5.3.2** The usual and customary fee for water testing by the State Department of Health applies. This fee may be paid as an administrative cost charged to services.

5.4 Capacity

5.4.1 Maximum Capacity

The provider shall not exceed the maximum allowable capacity for the type of care given and as approved by the local department.

5.4.2 Adult Day Services

The provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day services at any one time must be licensed by the Virginia Department of Social Services, Division of Licensing Programs.

5.4.3 Adult Foster Care

The provider shall not accept more than three adults in the home at any one time for the purpose of receiving room, board, supervision, and/or special services, regardless of the relationship of any adult to the provider.

A home that accepts more than three adults at any one time for the purpose of receiving room, board, supervision, and/or special services must be licensed as an assisted living facility (ALF) by the Virginia Department of Social Services, Division of Licensing Programs. An adult foster care provider can accept from one to three adults as long as he or she is an approved provider and cannot accept or have more

than three adult residents at any time, unless the individual cares for or maintains only persons related to him or her by blood or marriage.

5.4.4 Capacity of Home Providing More than One Type of Care

- 1) The local department shall evaluate each situation individually.
- 2) The following point system is suggested for determining capacity in a home providing more than one type of care:
 - a. Adult day services or adult foster care = 4 points
 - b. Day care child:
Infant = 3 points
Child aged 2 and over = 2 points
 - c. Foster care child:
Infant = 6 points
Child aged 2 and over = 3 points
- 3) Each provider or assistant can handle 12 points.

Examples:

- a. Adult foster care and Children
1 Adult = 4
2 Children 2 & over = 6
Total = 10 (= 1 provider)
- b. Adult day services and Children
2 Adults = 8
2 Children 2 & over = 4
Total = 12 (= 1 provider)
- c. Mixed Programs
1 Foster/Family Adult = 4
2 Foster Care Children 2 & over = 6
2 Day Care Child 2 & over = 4
Total = 14 (= 2 providers)
- d. Mixed Programs
2 Foster/Family Adults = 8
1 Foster Care Infant = 6
1 Foster Care Child 2 & over = 3
2 Day Care Children 2 & over = 4
1 Day Care Infant = 3
Total = 24 (= 2 providers)

6. RECORD REQUIREMENTS FOR THE OUT-OF-HOME PROVIDER

6.1 Written Documentation

The provider shall maintain written information on each adult in care. Information shall include:

- 6.1.1** Identifying information on the adult, including, but not limited to, full name, address, and date of birth;
- 6.1.2** Name, address, and home and work telephone numbers of responsible person(s);
- 6.1.3** Name and telephone number of person(s) to be called in an emergency when the responsible person cannot be reached;
- 6.1.4** Name of person(s) not authorized to call or visit the adult;
- 6.1.5** Date of admission and discharge of the adult;
- 6.1.6** Daily attendance record, where applicable (these are required for adult day services);
- 6.1.7** Medical information pertinent to the health care of the adult;
- 6.1.8** Correspondence related to the adult as well as other written information provided by the local department; this may include service plans, purchase of service orders and other information required by the local department to be kept by the provider; and
- 6.1.9** Placement agreement between the provider and adult /guardian, where applicable; placement agreements are applicable for adult foster care.

6.2 Confidentiality

- 6.2.1** Records are confidential and cannot be shared without the approval of the adult /guardian. The local department and its representatives shall have access to all records.
- 6.2.2** When the adult leaves the home, the local department may request that certain information be returned in order to accompany the adult to his or her next placement.
- 6.2.3** After the adult leaves, the provider may wish to keep information needed for the provider's purposes such as copies of unpaid invoices or other information for income taxes.

7. PROVIDER APPROVAL – ALL PROVIDERS

7.1 Approval Period

The approval period for a provider may be up to 24 months when the provider and, for out-of-home care, the home meets the requirements of 22

VAC 40-770-10 et seq., *Standards and Regulations for Agency Approved Providers*, and policy stated within this chapter.

7.1.1 Application

- 1) An Application for Agency Approved Provider, 032-02-138, must be completed by each applicant provider for the initial approval. It is not necessary for a renewal. This form can be found at http://www.dss.state.va.us/form/pdf/032-02-138_0.pdf.
- 2) The Application, once received by the local department, should be acted upon as quickly as possible.
- 3) A copy of the requirements should be given to each applicant provider.

7.1.2 Compliance Form

A Compliance Form for Agency Approved Provider (032-02-139/1 (Parts A & B)) should be completed for each provider at the initial approval and at each renewal. Part B of this form is only applicable to the out-of-home provider (i.e., adult day services and adult foster care). See Chapter A for information on obtaining forms.

7.1.3 Certificate of Approval

A Certificate of Approval, 032-02-137/3, should be issued to the adult services provider when the provider is approved for 24 months.

7.1.4 Expiration of Approval Period

The expiration date for the approval period should be set for the last day of the month in which approval is granted and be two years hence unless the approval is emergency, provisional, or suspended.

7.1.5 Notification

The provider must receive written notification regarding action on the application or at renewal as soon as possible. A Certificate of Approval, 032-02-137/3, is adequate written notice for providers.

7.1.6. Acceptance of Applications

If the locality does not offer the service or there is no need for a certain type of provider in the locality, the local department is not required to take an application from an applicant provider.

7.2 Allowable Variance

The provider may request an allowable variance on a requirement if the variance does not jeopardize the safety and proper care of the adult or violate federal, state, or local law.

7.2.1 Procedures for Requesting a Variance

- 1) The local department makes the decision as to whether or not to receive a variance. The provider cannot request a variance without the local department's agreement. The local department has the final authority relative to forwarding the request for a variance.
- 2) The request must be signed by the local department director or his or her designee.
- 3) The request should be directed to the appropriate family services specialist for approval.
- 4) The request should specify, at a minimum:
 - a. The type of provider,
 - b. The requirement(s) for which a variance is requested,
 - c. The length of time for which a variance is requested,
 - d. What efforts have been/will be made to meet the requirement(s),
 - e. What specific reasons or circumstances exist in the situation that justify requesting the variance, and
 - f. What precautions are being taken to ensure the safety and protection of adults.

7.2.2 Approval or Denial of a Variance

Approval or denial of a variance will be sent in writing and will indicate the length of time for which the variance is granted. The decision of the appropriate family services specialist is final unless changed as a result of an appeal.

7.3 Emergency Approval of a Provider

7.3.1 Conditions for Emergency Approval

Emergency approval of a provider may be granted under the following conditions:

- 1) The court orders emergency placement.
- 2) The adult or guardian requests placement or service in an emergency.

7.3.2 Minimum Checks

1) Home Visit for Out-of-Home Provider – Adult Day Services and Adult Foster Care

For out-of-home care a visit must be made to the home of the provider prior to or on the day of placement to assure the safety for the adult.

2) Face-to-Face Contact for In-Home Provider – Home-based Services

For in-home care, a face-to-face contact with the provider must be made prior to or on the day of service initiation to assure the safety of the adult.

7.3.3 Length of Time

- 1) Emergency approval should not exceed 30 days.
- 2) A full compliance study must be initiated immediately if the local department plans to use the provider beyond the 30 days.
- 3) If medical, water and sanitation, fire inspection, or criminal record check requirements cannot be determined within the 30-day period, emergency approval could continue up to 45 days as long as other requirements are met. It must not exceed 45 days. Appropriate documentation shall be made in the provider record explaining why the emergency approval exceeded 30 days.

7.3.4 Denial of Approval

Emergency approval may also be denied by the local department. In this case, the local department reviewing the request for approval must indicate the reason for the denial of the approval on the Compliance Form.

7.4 Provider Monitoring

7.4.1 For adult day services and adult foster care providers used by the local department, the department representative will visit the home of the provider as often as necessary but at least semi-annually to monitor the performance of the provider.

7.4.2 For home-based services providers (i.e., companion, chore, and homemaker providers) who are used by the local department, the department representative will interview the provider face-to-face as often as necessary but at least semi-annually to monitor the performance of the provider.

7.4.3 The purpose of the monitoring visits/interviews is to allow the local department staff to determine the provider's compliance with applicable requirements. If the provider had difficulty meeting a particular requirement, this should be checked at the monitoring contact. It is not intended to be a reexamination of all requirements.

- 7.4.4 The monitoring can be performed by the staff person who approved the provider, a staff person who facilitated the adult-provider relationship, or another local department staff person designated by the appropriate local department supervisor.
- 7.4.5 Monitoring visits must be documented on the Compliance Form for Agency Approved Provider (032-02-139/1) or in a provider narrative.
- 7.4.6 The adult, upon request, shall have access to provider monitoring reports completed by the local department.

7.5 Renewal Process

- 7.5.1 The local department will reapprove the provider prior to the end of the approval period if the provider, and, for an out-of-home provider, the home continues to meet requirements. The following areas do not need to be reexamined unless the local department feels there is a need:
 - 1) Application (no renewal application is necessary)
 - 2) Tuberculosis Statement
 - 3) References
 - 4) Employment History
- 7.5.2 The Compliance Form for Agency Approved Provider (032-02-139/1) must be completed to document the initial approval and at each renewal.

7.6 Provider Responsibilities

A provider in good standing is a local department approved provider who has the capability, in all respects, to perform fully the requirements of a local department approved provider; who has the moral and business integrity and the reliability that will assure good faith performance; and who has been approved by the local department as meeting the requirements for the type of provider the individual applies or is approved to be. In determining whether the provider has good standing, a number of factors, including but not limited to the following, are considered. The provider should:

- 1) Have a satisfactory record of performance, including providing services in a timely manner, being present to provide care when assigned, and having no legitimate complaints from the adult in care about the care and services received;
- 2) Comply with the required performance of job duties;

- 3) Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the requirements of the position, as needed;
- 4) Have no active allegations of adult abuse, neglect, or exploitation made against him or her. In this case, it is within the purview of the local department to find a substitute provider until the allegation has been resolved; a founded APS allegation shall be used as a basis for denial of the provider or applicant;
- 5) Has satisfactory monitoring assessments completed by the local department indicating that quality work is performed according to the agreement with the local department; and
- 6) For in-home providers, provide documentation of time worked and be able to verify that services were provided to the adult in care as agreed. For out-of-home providers, be able to verify that services were provided to the adult in care pursuant to the agreement between the provider and the local department.

The provider who does not meet these requirements shall be considered to no longer be in good standing as a provider. In such case, the local department has the authority to grant provisional approval, suspend approval, or revoke approval per Section 7.7 of this chapter.

7.7 Inability of the Provider to Meet Requirements

If the provider cannot meet provider requirements, the local department will grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of non-compliance.

7.7.1 Provisional Approval

- 1) The local department may grant provisional approval if non-compliance issues do not jeopardize the safety or proper care of adults.
- 2) Provisional approval must not exceed three months.
- 3) The provider shall be given the opportunity to correct any non-compliance issues and be reassessed by the local department, at which time the provider approval may be reinstated as being in good standing with or without a variance, suspended, or revoked.

7.7.2 Suspension of Approval

- 1) The local department may suspend approval if non-compliance issues may jeopardize the safety and proper care of adults.
- 2) Suspension must not exceed three months.

- 3) During the suspension, the provider can give no care to adults referred by the local department.
- 4) The provider shall be given the opportunity to correct any non-compliance issues and be reassessed by the local department, at which time the provider approval may be reinstated as being in good standing with or without a variance, suspended, or revoked.

7.7.3 Revocation of Approval

- 1) If the provider cannot meet requirements within three months and a variance is not granted, the approval must be revoked.
- 2) The local department may immediately revoke approval of a provider, including removing the adult(s) from adult foster care or adult day services if the adult wishes, in the event of immediate jeopardy to the safety and well-being of the adult receiving services.

7.7.4 Notification of Action

The local department must notify the provider in writing, specify the reasons for provisional approval, suspension, or revocation, and indicate the provider's right to file an appeal. The Appendix contains a sample letter.

7.8 Relocation of the Out-of-Home Provider – Adult Day Services and Adult Foster Care

- 7.8.1 If the out-of-home provider moves within the same locality, the local department will determine continued compliance with requirements related to the home.
- 7.8.2 If an out-of-home provider moves within the same locality, the local department must visit to determine compliance with requirements for the home as soon as possible but no later than 30 days after relocation to avoid a disruption in services to the adult(s) in care.
- 7.8.3 The renewal period does not change unless a full reapproval is done at the same time. A new Certificate of Approval, 032-02-137/3, does not need to be issued unless the provider requests one.
- 7.8.4 If an out-of-home provider moves outside of the locality that approved the provider, the local department in the new place of residence may accept the provider approval of the initial local department based upon the recommendation of the initial local department or may initiate the approval process itself. The receiving local department must visit to determine compliance with requirements for the home as soon as possible but no later than 30 days after relocation to avoid a disruption in services to the adult(s) in care.

7.9 Right to Appeal

7.9.1 The provider shall have the right to appeal the actions of the local department.

7.9.2 If a dispute cannot be resolved between an approved provider or applicant provider and a local department, the applicant/provider has the right to appeal. The steps are as follows:

- 1)** A provider/applicant must request, in writing, a review by the local department within 30 days of receiving notice of adverse action (i.e., suspension, revocation, or denial).
- 2)** The local department must schedule a review conference within 10 working days of receipt of the written request.
- 3)** Participants in the review conference may include:
 - a.** The applicant/provider(s);
 - b.** The appropriate staff person and supervisor;
 - c.** The local department director or his or her designee; and
 - d.** Up to two other individuals chosen by the applicant/provider.
- 4)** The local department must write a summary of the review conference within 10 working days of the conference. A copy must be shared with all participants. The local department must give the provider/applicant the name and address of the appropriate family services specialist at the same time that the written summary is distributed.
- 5)** If the applicant/provider is not satisfied, he or she should request, in writing, a review by the appropriate family services specialist.
- 6)** The family services specialist must review the request and send a decision to the applicant/provider within 30 calendar days of receipt of the request.
- 7)** The decision of the family services specialist is final.

7.10 Use of Provider by More than One Department

7.10.1 Responsibility of Approving Department

The initial approving local department is responsible for continued approval of providers used by more than one local department.

7.10.2 Responsibility of Other Departments

Local departments may accept the provider approval of another local department. Other local departments must notify and obtain prior approval of the initial approving local department for each adult who needs to be placed or served.

7.11 Local Department Record Keeping

7.11.1 The local department must maintain a separate file (record) on each approved provider. Documentation in the file must be complete, accurate, and legible and completely signed with local department staff person's name and title and completely dated with month, day, and year. Confidentiality of records must be ensured.

7.11.2 Contents of the provider file.

- 1)** Application for Agency Approved Provider, 032-02-138, or earlier version of an application.
- 2)** Compliance Form for Agency Approved Provider and for out-of-home providers (032-02-139/1 (Parts A and B)).
- 3) Purchase of Service Agreements**
 - a.** An Individual Vendor Agreement may be used when services are purchased from the following providers: adult day services, adult foster care, and chore, companion, and homemaker.
 - b.** Any Purchase of Service Orders and Vendor Invoices (related to the Individual Vendor Agreement) should be maintained in the adult's record, not the provider's file. Copies of these documents may be maintained in the provider file.
 - c.** Other information may include, where applicable, medical statements, criminal record check, fire inspection, water and sanitation inspection, correspondence, and provider narrative.

7.11.3 Department Data System

Local department approved providers should be entered into the appropriate Department data system (e.g., OASIS or VACIS) when they are approved.

7.12 When the Provider Is the Subject of an APS Allegation

If a provider is the subject of an APS allegation against an adult in care, the local department may assign another provider to care for the adult until the allegation is resolved.

8. THE LOCAL DEPARTMENT AS THE ADULT'S FISCAL AGENT

8.1 General Requirements

In an agreement reached between the Virginia Department of Social Services and the Internal Revenue Service (IRS), it was determined that there is a common-law employer-employee relationship between the adult services home-based provider (companion, chore, and homemaker) and the adult. The VDSS/IRS agreement was effective January 1, 1995. Per the agreement, local departments act as fiscal agents on behalf of the adult by ensuring that necessary taxes are paid. The services performed by the home-based provider constitute "domestic service in a private home of the employer." Therefore, the adult is the employer of the provider. Neither the state nor the local department of social services is the provider's employer.

8.2 Authorization to Act on Adult's Behalf

The local department should inform the adult that the agency is acting as fiscal agent in the adult's behalf in paying and withholding the required taxes. Authorization should be obtained and retained in the adult's record. A sample authorization form is found in the appendix.

8.3 Purchase of Services Orders

For each Purchase of Services Order written, the local department should encumber, as fiscal agent for the adult, the funds required to pay the applicable taxes.

8.4 Immigration and Naturalization Service Verification

The local department, as fiscal agent for the adult, is responsible for completing the I-9 form from the Immigration and Naturalization Service (INS) on behalf of the adult. The I-9 form is available on the INS website at www.ins.usdoj.gov/graphics/formsfee/forms/files/i-9.pdf.

8.5 Contracting with an External Organization for Home-Based Services

If a local department of social services chooses to contract with an external organization to provide home-based services, that contract organization must assume responsibility for collecting and paying FICA and payment of unemployment taxes, if applicable, and for issuing W-2 or W-4 forms to providers. (See Purchase of Services chapter for details on contracting services.)

8.6 SSI Benefits Received by Provider

In cases where a provider is receiving SSI, SSA, or other public assistance benefits, the income received as a provider may have an effect on the provider's amount of or entitlement to SSI. The effects of receiving this additional income shall be discussed with the provider. The provider must be advised of his or her responsibility for notifying the Social Security Administration.

8.7 Rate of Payment for Home-Based Services

Each local department of social services shall establish local board policy to specify the maximum number of hours of service and rate of pay for providers. The rate of payment for companion, chore, and homemaker services shall be at least the minimum wage.

9. FRAUD

The *Code of Virginia*, § 63.2-522, deems guilty of larceny any person who obtains assistance or benefits by means of a willful false statement or who knowingly fails to notify of a change in circumstances that could affect eligibility for assistance.

Recipients deemed guilty of larceny, upon conviction, are subject to penalties as specified in the *Code of Virginia*, § 18.2-95 et seq. Local departments must explain to applicants for adult services and providers the importance of providing accurate and thorough information and of notifying the local department of changes during service delivery. Anyone who causes the local department to make an improper vendor payment by withholding information or by providing false information may be required to repay the amount of the improper payment. Local departments must have a tracking system in place to ensure that claims are established and satisfied. Adult Services providers found guilty of fraud will be denied further vendor payments.

**SAMPLE LETTER
REFERENCE/EMPLOYMENT VERIFICATION**

Dear _____ (reference or employer):

_____ (provider's name) has applied to our local department to be _____ (type of provider) and has given your name as a reference (or employer). We would appreciate your answering the following questions. Your comments are necessary to assist our local department to determine this individual's ability, skill, and experience in providing care to adults.

We appreciate your time and assistance. If you have any questions, please call me at _____ (telephone number). A stamped, self-addressed envelope is enclosed for your convenience. Thank you very much.

Sincerely,

_____ (worker's name)

1. How long have you known this person?
2. Explain how you came to know this person.
3. What abilities, skills, and/or experiences does this person have to provide care to adults?
4. Is this person:

Physically and mentally capable of providing care to adults?

yes ☐ no ☐ Comment: _____

Able to have positive and constructive relationships with adults?

yes ☐ no ☐ Comment: _____

Able to relate to adults with respect, courtesy, and understanding?

yes ☐ no ☐ Comment: _____

Capable of handling emergencies with dependability and good judgment?

yes ☐ no ☐ Comment: _____

Able to communicate and follow instructions sufficiently to assure an adult's safety and protection?

yes ☐ no ☐ Comment: _____

Your signature _____

**SAMPLE LETTER
EMERGENCY APPROVAL OR DENIAL**

Dear _____:

This is to notify you that our local department has taken the following action:

- ☐ Approved you as a (type of provider) on an emergency basis. Your approval period is from (date) to (date). In order to be considered for full approval, you will need to meet the following requirement(s) (specify requirement(s) to be met):

- ☐ Denied your application as a (type of provider) because:

If you have any questions, please call me at _____ (telephone number).

Sincerely,

____ (worker name)

____ (title)

**SAMPLE LETTER
PROVISIONAL, SUSPENSION, OR REVOCATION**

Dear _____:

This is to notify you that our local department has taken the following action regarding your status as a (type of provider) until (date).

☐ Provisional approval ☐ Suspension of approval ☐ Revocation of Approval

The reason for this action is that you do not meet the following requirements (specify requirements):

If you have any questions about this, please call me at (telephone number). If you are not satisfied with the action of the local department, you have the right to appeal this decision. Appeal information is attached.

Sincerely,

(worker name)

(title)

**SAMPLE LETTER
REQUEST FOR FIRE INSPECTION**

DATE:

TO: Fire Inspection Authority

FROM: (Worker name, agency, telephone number, and address)

SUBJECT: REQUEST FOR FIRE INSPECTION

The following individual(s) has applied to be a _____ (type of provider).
We request that you inspect the home to determine compliance with the applicable fire
safety code and provide us a report of your findings.

Thank you.

Name of Provider/Applicant:
Address:
Directions to Home:

**SAMPLE LETTER
REQUEST FOR SANITATION INSPECTION**

DATE:

TO: Health Department

FROM: (Worker name, agency, telephone number, and address)

SUBJECT: REQUEST FOR SANITATION INSPECTION

The following individual(s) has applied to be a _____ (type of provider). The home has a private water supply (and/or sewage disposal system). We request that you inspect this home to determine if it meets the rules and regulations governing "semi-public restaurants serving 12 or less recipients of service" and provide us a report of your findings.

Please request the State Health Department to bill our agency for the fee to test water. The address is as follows:

Agency Name/Address

Thank you.

Name of Provider/Applicant:
Address:
Directions to Home:

**Virginia Department of Social Services
Authorization to Act as Agent on Adult's Behalf**

*Adult Information:**Local Department Information:*

Name:	Agency:
Address:	Address:
Phone #: ()	Worker:
Case #:	Phone #: ()

The Virginia Department of Social Services and the Internal Revenue Service (IRS) have an agreement that impacts you, your provider, and the local social services agency regarding the employment status of the provider. The IRS has determined that you and your provider have a common-law employer-employee relationship that means that you are the employer of your provider.

Social Security laws require that all employers Federal Insurance Contributions Act (FICA) tax to the federal government to allow the employee to have Social Security benefits. In addition, employers must pay federal and state unemployment taxes for their employees. As such, FICA and federal and state unemployment taxes must be paid for your provider.

You must authorize the local social services agency to act as your fiscal agent to make these tax payments on your behalf to the federal government. **These tax payments will be made without cost to you.**

Please sign and date the statement printed below so that these tax payments can begin. The local social services agency will keep this statement on file. Without your signed authorization, services cannot be provided, and payment of these taxes would be your responsibility.

AUTHORIZATION

I authorize the local social services agency to act as my agent in withholding FICA taxes from the wages being paid on my behalf to the person who provides care to me in my home. I also understand that the local social services agency will collect and pay the necessary Social Security taxes; pay federal and state unemployment taxes as needed; and issue W-2 forms as required for payment made to my service provider on my behalf.

 Signature of Adult

 Date

**VIRGINIA DEPARTMENT OF SOCIAL SERVICES
REPORT OF TUBERCULOSIS SCREENING
DEPARTMENT APPROVED PROVIDERS**

Standards and Regulations for Department Approved Providers (22 VAC 40-770-10 et seq.) require certain individuals to submit a report indicating the absence of tuberculosis in a communicable form when involved in providing services that are approved by local departments of social services. Each report must be dated and signed by the examining physician, the physician's designee, or an official of a local health department.

NAME: _____ DATE OF BIRTH: _____

ADDRESS (STREET, CITY, STATE, ZIP CODE): _____

1) Tuberculin Skin Test (PPD): Positive: _____ Negative: _____

Date of Exam: _____

A PPD screening was not administered for the following reason: _____

2) The above person is believed to be free of communicable tuberculosis:

YES: _____ NO: _____

3) Additional information: _____

Signature: _____

Date: _____

Printed or typed physician's name: _____

Physician's address (Street, City, State, Zip Code) and telephone number: _____

REQUEST FOR TUBERCULOSIS STATEMENT

FORM NUMBER: 032-02-142

PURPOSE: This optional form is used to obtain the medical statement regarding tuberculosis on a provider or adult household member.

USE: The top of the form is completed by the local department. It should be given to the provider or household member for him/her to obtain the necessary statement regarding tuberculosis. The physician or health department representative completes the lower portion of the form. The form is primarily needed for an initial approval only.

COPIES: There is only one copy of this form.

DISPOSITION OF COPIES: The completed form should be retained in the provider's file at the local department.

INSTRUCTIONS FOR PREPARING FORM: Complete the information on the top portion of the form.